

Appl. No. 09/758,263

Response to Office Action of August 24, 2005

**REMARKS**

This Response is submitted in reply to the Final Office Action of August 24, 2005.  
Claims 1-16 and 23-25 are pending in the present application.

Prompt and favorable action is respectfully solicited.

**Double Patenting Rejections**

Claims 1-9 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-5 of U.S. Patent No. 6,217,571 to Peyman; claims 1-14 of U.S. Patent No. 6,221,067 to Peyman; claims 1-31 of U.S. Patent No. 6,264,648 to Peyman; claims 1-11 of U.S. Patent No. 6,203,538 to Peyman; and claims 1-15 of U.S. Patent No. 5,722,971 to Peyman.

Additionally, claims 10-16 and 23-25 stand rejected over each of these patents in view of U.S. Patent No. 4,729,372 to L'Esperance, Jr.

With regard to the '067 Peyman patent, the '571 Peyman patent, the '538 Peyman patent and the '971 Peyman patent, a terminal disclaimer for each of these patents is filed herewith to overcome these rejections. Therefore, Applicant respectfully requests that the rejections based on these patents be withdrawn.

Applicant will now turn to the rejection based on the '648 Peyman patent. The Examiner contends that claims 1-9 are obvious in view of this patent. Applicant respectfully disagrees.

Independent claim 1 recites, among other things, forming a corneal flap, a portion of which remains attached to the cornea by an area located at the main optical axis and the flap having a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. The '648 Peyman patent does not disclose, teach or suggest such a flap.

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The '648 patent discloses various methods of accessing the tissue beneath the surface of the cornea to alter the refractive properties of the eye. For example, the '648 patent discloses removing a thin layer 18 from the center part of a patient's live cornea (see Fig. 2, and col. 5, lines 65-7), creating an intrastromal pocket to flatten the central portion of the cornea (see Figs. 19-27, and cols. 8-9, lines 56-5), and forming intrastromal incisions or tunnels (see Figs. 28-36, col. 10, lines 1-14 and 55-67).

There is no disclosure or suggestion in the '648 patent of forming a corneal flap, a portion of which remains attached to the cornea by an area located at the main optical axis. Additionally, there is no disclosure or suggestion of a peripheral edge of a corneal flap forming an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface (e.g., the exposed cornea).

Moreover, the L'Esperance patent does not overcome the deficiencies of the '648 patent. The L'Esperance patent discloses a method of ablating the cornea. The L'Esperance method ablates the surface of the cornea and does not form a flap of any kind, let alone a corneal flap having a portion which remains attached to the cornea by an area located at the main optical axis or having a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface.

Therefore, Applicant submits that independent claim 1 and its dependent claims 2-12 are allowable over each of these patents alone or in combination.

Independent claims 13 and 23 and their respective dependent claims are allowable for similar reasons as those discussed for independent claim 1. That is, each of these claims recites a flap having a portion which remains attached to the cornea by an area located at the main optical axis, and a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. These elements are not disclosed taught or suggested by either the '648 patent or the L'Esperance patent.

In view of the foregoing comments and amendments, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested. Should



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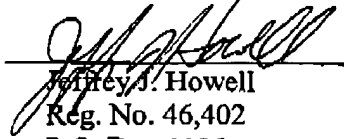
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the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the number indicated below.

Respectfully submitted,

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